IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27476-4-III**
	)	
Appellant,	)	
	)	
v.	)	**Division Three**
	)	
KARYNDA MICHELLE BENDER,	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, J. — The State of Washington appeals the trial court's decision to credit the time Karynda Bender voluntarily spent at an in-patient drug treatment facility against her jail sentence for possessing methamphetamine. The trial court was laudably motivated to credit Ms. Bender for her efforts at dealing with her drug problem. Nonetheless, the voluntary stay at an in-patient treatment facility is not "confinement" within the meaning of the Sentencing Reform Act of 1981 (SRA). Accordingly, we reverse and remand for re-sentencing.

FACTS

Ms. Bender was charged in the Spokane County Superior Court with one count of possessing a controlled substance, methamphetamine. She posted bail and was released from custody after spending 34 days in jail on this offense. While the case was pending, she checked herself into the American Behavioral Health Systems (ABHS) treatment facility. She completed a 28 day in-patient program.

A plea agreement was reached and Ms. Bender pleaded guilty as charged. The parties recognized an offender score of five based on four prior convictions and the fact that she had been on community supervision at the time of the offense. The standard range for the offense was 6 months plus one day to 18 months in custody. The parties jointly recommended the low end sentence, but disagreed on the amount of credit for time already served. The trial court ultimately determined that Ms. Bender had been in custody for 34 days.

Defense counsel asked that the court credit the 28 days Ms. Bender had served at ABHS against the sentence. He explained that the facility was secure and that patients could not leave the building unless they were accompanied by a staff member. Visitors to the facility also had to be accompanied by a staff member. The prosecutor objected, arguing that ABHS was not a custodial facility and that Ms. Bender, who checked herself

in, could also check herself out without consequence.

The trial court imposed the recommended low end sentence of 6 months plus one day. The court converted 30 days of the sentence to 240 hours of community service, and authorized the balance of the sentence to be served in partial confinement. The court also ordered that the defendant be given credit for the time spent at ABHS for a total of 62 days credit.

The State appealed.

ANALYSIS

The trial court was required to grant credit for all "confinement time" served prior to sentencing. RCW 9.94A.505(6). The SRA definition of confinement, however, does not apply to time served in a treatment facility.

"Confinement" is defined as "total or partial confinement." RCW 9.94A.030(11). "'Total confinement' means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day." RCW 9.94A.030(44). In part, the term "'Partial confinement' means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government." RCW 9.94A.030(30). The critical component of these definitions is that the facility is either

operated by the state/other government unit, or is "utilized under contract" by them to "confine" a person.

ABHS is not operated by the government. Similarly, it was not in this instance "utilized under contract" by any governmental agency. Instead, it was Ms. Bender who utilized the facility. Whether or not ABHS has contract responsibilities with some governmental agency is not informative in how the facility was utilized in this instance. The government did not send Ms. Bender to ABHS or otherwise compel her to be there. It was not utilizing the facility for confinement. Accordingly, it was not a place of total or partial confinement.

Respondent argues that the term "confinement" is very flexible and is defined under Washington law to include work release facilities, home detention, and other alternative programs. She is correct. However, treatment and medical facilities are not among the alternatives included within the definition. The Legislature has not seen fit to include voluntary or involuntary treatment programs within its definition of "confinement." Also inherent in the concept of "confinement" is that it is imposed by a court rather than resulting from a voluntary act of an offender. The courts impose sentences. RCW 9.94A.500. The parties do not.

An earlier case reached the same conclusion under a somewhat different means of

analysis because of significant factual differences. *State v. Hale*, 94 Wn. App. 46, 971 P.2d 88 (1999). *Hale* involved consolidated cases with one defendant who was sentenced to prison and another sentenced to serve a local jail sentence. In both instances, the offenders were ordered at sentencing to enter into drug treatment and be credited for it. *Id.* at 50-51. On review, Division Two of this court noted that credit could only be granted for time served *prior* to sentencing. *Id.* at 54-55. The court also flatly declared: "But the SRA does not grant courts authority to credit drug treatment against confinement time or community service." *Id.* at 55.

This case is not *Hale* due to the two significant differences: (1) treatment was ordered by a court; and (2) treatment was post-sentencing. Nonetheless, our result here is the same. Self-imposed drug treatment is not confinement within the meaning of the SRA. The trial court erred in concluding otherwise.

Reversed and remanded.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

Schultheis, C.J.

Sweeney, J.